

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

ROSETTA STONE LTD.,)
)
Plaintiff,)
)
vs.)
)
GOOGLE INC.,)
)
Defendant.)

Case No. 1:09-cv-00736 (GBL/TCB)

**DECLARATION OF JENNIFER L. SPAZIANO IN SUPPORT OF
ROSETTA STONE LTD'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO LIABILITY**

FILED IN PART UNDER SEAL

I, Jennifer L. Spaziano, declare and state as follows:

1. I am a partner of the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, in Washington, D.C. I am duly licensed to practice before the courts of the State of California and the District of Columbia and have been admitted to appear *pro hac vice* in the captioned matter. I am counsel for Rosetta Stone Ltd. in the captioned matter and make this Declaration in Support of Rosetta Stone Ltd.'s Motion for Partial Summary Judgment as to Liability. I make this Declaration based on my own personal knowledge, and if called upon to do so, I could and would testify competently thereto.

2. Attached hereto as Spaziano Exhibit 1 is a true and correct copy of Google's Answer to Plaintiff's Complaint and Affirmative Defenses that was filed on October 2, 2009 in the above-captioned case.

3. Attached hereto as Spaziano Exhibit 2 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0306283 through GOOG-RS-0306318 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

4. Attached hereto as Spaziano Exhibit 3 are true and correct copies of excerpts from Google Inc.'s Form 10-K for the Fiscal Year Ended December 31, 2009, that was obtained from the Securities and Exchange Commission's website (<http://www.sec.gov>).

5. Attached hereto as Spaziano Exhibit 4 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0079210 through GOOG-RS-0079269 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

6. Attached hereto as Spaziano Exhibit 5 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000302 through GOOG-RS-0000309 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

7. Attached hereto as Spaziano Exhibit 6 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0068596 through GOOG-RS-0068629 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

8. Attached hereto as Spaziano Exhibit 7 are true and correct copies of excerpts from Google's Form S-1 Registration Statement, filed April 29, 2004, that was obtained from the Securities and Exchange Commission's website (<http://www.sec.gov>).

9. Attached hereto as Spaziano Exhibit 8 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0004574 through GOOG-RS-0004620 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

10. Attached hereto as Spaziano Exhibit 9 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0261590 through GOOG-RS-0261591 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

11. Attached hereto as Spaziano Exhibit 10 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-026760 through GOOG-RS-026763 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

12. Attached hereto as Spaziano Exhibit 11 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0261327 through GOOG-RS-0261332 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

13. Attached hereto as Spaziano Exhibit 12 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000291 through GOOG-RS-0000292 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

14. Attached hereto as Spaziano Exhibit 13 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000452 through GOOG-RS-0000455 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

15. Attached hereto as Spaziano Exhibit 14 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000003 through GOOG-RS-0000006 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

16. Attached hereto as Spaziano Exhibit 15 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000099 through GOOG-RS-0000101 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

17. Attached hereto as Spaziano Exhibit 16 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000015 through GOOG-RS-0000016 that I

understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

18. Attached hereto as Spaziano Exhibit 17 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0309869 through GOOG-RS-0309870 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

19. Attached hereto as Spaziano Exhibit 18 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0309881 through GOOG-RS-0309915 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

20. Attached hereto as Spaziano Exhibit 19 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0077354 through GOOG-RS-0077422 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

21. Attached hereto as Spaziano Exhibit 20 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0001998 through GOOG-RS-0001999 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

22. Attached hereto as Spaziano Exhibit 21 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0133421 through GOOG-RS-0133422 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

23. Attached hereto as Spaziano Exhibit 22 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0188825 through GOOG-RS-018826 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

24. Attached hereto as Spaziano Exhibit 23 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0249754 through GOOG-RS-0249756 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

25. Attached hereto as Spaziano Exhibit 24 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0359184 through GOOG-RS-0359190 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

26. Attached hereto as Spaziano Exhibit 25 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0425151 through GOOG-RS-0425176 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

27. Attached hereto as Spaziano Exhibit 26 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0364013 through GOOG-RS-0364017 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

28. Attached hereto as Spaziano Exhibit 27 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0461853 through GOOG-RS-0461855 that I

understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

29. Attached hereto as Spaziano Exhibit 28 is a true and correct copy of a document titled "Analysis of Mr. Malackowski's Classifications Maximum Unjust Enrichment by Classification" that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

30. Attached hereto following Tab A and identified by deponent are excerpts from the following deposition transcripts:

- a. 3/12/10 deposition of Jonathan Alferness in the captioned matter
- b. 3/3/10 deposition of Edward Allen Blair in the captioned matter
- c. 2/23/10 deposition of Terri Chen in the captioned matter
- d. 2/24/10 deposition of Edward Chiang in the captioned matter
- e. 3/11/10 deposition of Denis P. Doyle in the captioned matter
- f. 3/8/10 deposition of Steve F. DuBow in the captioned matter
- g. 2/26/10 deposition of Daniel Dulitz in the captioned matter
- h. 3/4/10 deposition of Baris Gultekin in the captioned matter
- i. 9/30/04 deposition of Rose Hagan in *GEICO v. Google, Inc.*, No. 1:04CV507 (E.D. Va.), which I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone
- j. 11/29/06 deposition of Rose Hagan in *CNG Financial Corp. v. Google, Inc.*, No. 1:06-cv-040 (N.D. Ohio), which I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone
- k. 3/5/10 deposition of Rose Hagan in the captioned matter
- l. 3/5/10 deposition of Richard T. Holden in the captioned matter
- m. 3/9/10 deposition of Deborah Jeffries in the captioned matter

- n. 3/10/10 deposition of Bill Lloyd in the captioned matter
- o. 2/25/10 deposition of Cory Louie in the captioned matter
- p. 3/10/10 deposition of Rita Kay Porter in the captioned matter
- q. 3/12/10 deposition of Diana Stanley Thomas in the captioned matter
- r. 3/18/10 deposition of Susan Wojcicki in the captioned matter

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on March 26, 2010, at Washington, District of Columbia.

/s/ _____
Jennifer L. Spaziano

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2010 I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system which will then send a notification of such filing (NEF) to the following:

Jonathan D. Frieden
ODIN, FELDMAN & PETTLEMAN, P.C.
9302 Lee Highway, Suite 1100
Fairfax, VA 22031
jonathan.frieden@ofplaw.com

Counsel for Defendant, Google Inc.

True and correct copies of documents filed under seal will be sent via electronic mail to:

jonathan.frieden@ofplaw.com
margretcaruso@quinnemanuel.com

March 26, 2010

Date

/s/

Warren T. Allen II (Va. Bar No. 72691)
Attorney for Rosetta Stone Ltd.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Telephone: (202) 371-7000
Facsimile: (202) 661-9121
Warren.Allen@skadden.com